

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHEIK SY,

Plaintiffs,

v.

CASE NO.: 1:18-cv-04202-ENV-RER

ITMAM INC. and AL AHMED a/k/a MOHAMMED
ALAWI a/k/a JOSE FULA,

ANSWER

Defendants.

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Defendants ITMAM INC. and AL AHMED (hereinafter referred to as the "Defendants"), by their attorney, Law Offices of Mitchell S. Segal, P.C., as and for their answer to Plaintiff's Complaint (the "Complaint"), deny each and every allegation contained in the Complaint except as admitted or otherwise qualified herein, and alleges on knowledge with respect to themselves and their own acts and on information and belief as to all other matters that they:

1. The Defendants deny the allegations contained in Paragraph "1" of the Complaint.
2. Paragraph "2" of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this Court.
3. Paragraph "3" of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this Court.
4. Paragraph "4" of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required the Defendants aver that Plaintiff seeks the jurisdiction of this Court.

PARTIES

5. The Defendants have no knowledge or information sufficient to form a belief as to the

truth or falsity of the allegations contained in Paragraph “5” of the Complaint.

6. The Defendants admit the allegations contained in Paragraph “6” of the Complaint.
7. The Defendant deny the allegations contained in Paragraph “7” of the Complaint.
8. The Defendants admit the allegations contained in Paragraph “8” of the Complaint.
9. The Defendants deny the allegations contained in Paragraph “9” of the Complaint.
10. The Defendants deny the allegations contained in Paragraph “10” of the Complaint.
11. The Defendants deny the allegations contained in Paragraph “11” of the Complaint.
12. The Defendants deny the allegations contained in Paragraph “12” of the Complaint.
13. The Defendants deny the allegations contained in Paragraph “13” of the Complaint.
14. The Defendants deny the allegations contained in Paragraph “14” of the Complaint.
15. The Defendants deny the allegations contained in Paragraph “15” of the Complaint.
16. The Defendants deny the allegations contained in Paragraph “16” of the Complaint.

FACTUAL ALLEGATIONS

17. The Defendants deny the allegations contained in Paragraph “17” of the Complaint.
18. The Defendants deny the allegations contained in Paragraph “18” of the Complaint.

19. The Defendants deny the allegations contained in Paragraph “19” of the Complaint.
20. The Defendants deny the allegations contained in Paragraph “20” of the Complaint.
21. The Defendants deny the allegations contained in Paragraph “21” of the Complaint.
22. The Defendants deny the allegations contained in Paragraph “22” of the Complaint.
23. The Defendants deny the allegations contained in Paragraph “23” of the Complaint.
24. The Defendants deny the allegations contained in Paragraph “24” of the Complaint.
25. The Defendants deny the allegations contained in Paragraph “25” of the Complaint.
26. The Defendants deny the allegations contained in Paragraph “26” of the Complaint.
27. The Defendants deny the allegations contained in Paragraph “27” of the Complaint.
28. The Defendants deny the allegations contained in Paragraph “28” of the Complaint.
29. The Defendants deny the allegations contained in Paragraph “29” of the Complaint.
30. The Defendants deny the allegations contained in Paragraph “30” of the Complaint.
31. The Defendants deny the allegations contained in Paragraph “31” of the Complaint.
32. The Defendants deny the allegations contained in Paragraph “32” of the Complaint.

33. The Defendants deny the allegations contained in Paragraph “33” of the Complaint.

34. The Defendants deny the allegations contained in Paragraph “34” of the Complaint.

35. The Defendants deny the allegations contained in Paragraph “35” of the Complaint.

FIRST ALLEGED CAUSE OF ACTION

36. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "35" as if fully set forth herein.

37. The Defendants admit the allegations contained in Paragraph “37” of the Complaint.

38. The Defendants deny the allegations contained in Paragraph “38” of the Complaint.

39. The Defendants deny the allegations contained in Paragraph “39” of the Complaint.

40. The Defendants deny the allegations contained in Paragraph “40” of the Complaint.

41. The Defendants deny the allegations contained in Paragraph “41” of the Complaint.

SECOND ALLEGED CAUSE OF ACTION

42. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "41" as if fully set forth herein.

43. The Defendants admit the allegations contained in Paragraph “43” of the Complaint.

44. The Defendants deny the allegations contained in Paragraph “44” of the Complaint.

45. The Defendants deny the allegations contained in Paragraph “45” of the Complaint.

46. The Defendants deny the allegations contained in Paragraph “46” of the Complaint.

47. The Defendants deny the allegations contained in Paragraph “47” of the Complaint.

THIRD ALLEGED CAUSE OF ACTION

48. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "47" as if fully set forth herein.

49. The Defendants admit the allegations contained in Paragraph “49” of the Complaint.

50. The Defendants deny the allegations contained in Paragraph “50” of the Complaint.

51. The Defendants deny the allegations contained in Paragraph “51” of the Complaint.

52. The Defendants deny the allegations contained in Paragraph “52” of the Complaint.

53. The Defendants deny the allegations contained in Paragraph “53” of the Complaint.

54. The Defendants deny the allegations contained in Paragraph “54” of the Complaint.

FOURTH ALLEGED CAUSE OF ACTION

55. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "54" as if fully set forth herein.

56. The Defendants admit the allegations contained in Paragraph “56” of the Complaint.

57. The Defendants deny the allegations contained in Paragraph “57” of the Complaint.

58. The Defendants deny the allegations contained in Paragraph “58” of the Complaint.

59. The Defendants deny the allegations contained in Paragraph “59” of the Complaint.

60. The Defendants deny the allegations contained in Paragraph “60” of the Complaint.

61. The Defendants deny the allegations contained in Paragraph “61” of the Complaint.

FIFTH ALLEGED CAUSE OF ACTION

62. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "61" as if fully set forth herein.

63. The Defendants deny the allegations contained in Paragraph “63” of the Complaint.

64. The Defendants deny the allegations contained in Paragraph “64” of the Complaint.

65. The Defendants deny the allegations contained in Paragraph “65” of the Complaint.

66. The Defendants deny the allegations contained in Paragraph “66” of the Complaint.

67. The Defendants deny the allegations contained in Paragraph “67” of the Complaint.

SIXTH ALLEGED CAUSE OF ACTION

68. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "67" as if fully set forth herein.

69. The Defendants deny the allegations contained in Paragraph “69” of the Complaint.

70. The Defendants deny the allegations contained in Paragraph “70” of the Complaint.

SEVENTH ALLEGED CAUSE OF ACTION

71. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "70" as if fully set forth herein.

72. The Defendants deny the allegations contained in Paragraph “72” of the Complaint.

73. The Defendants deny the allegations contained in Paragraph “73” of the Complaint.

EIGHTH ALLEGED CAUSE OF ACTION

74. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "73" as if fully set forth herein.

75. The Defendants deny the allegations contained in Paragraph “75” of the Complaint.

76. The Defendants deny the allegations contained in Paragraph “76” of the Complaint.

77. The Defendants deny the allegations contained in Paragraph “77” of the Complaint.

78. The Defendants deny the allegations contained in Paragraph “78” of the Complaint.

79. The Defendants deny the allegations contained in Paragraph “79” of the Complaint.

80. The Defendants deny the allegations contained in Paragraph “80” of the Complaint.

81. The Defendants deny the allegations contained in Paragraph "81" of the Complaint.

82. The Defendants deny the allegations contained in Paragraph "82" of the Complaint.

NINTH ALLEGED CAUSE OF ACTION

83. Defendants repeat and re-allege each and every answer to Paragraphs "1" through "82" as if fully set forth herein.

84. The Defendants deny the allegations contained in Paragraph "84" of the Complaint.

85. The Defendants deny the allegations contained in Paragraph "85" of the Complaint.

86. The Defendants deny the allegations contained in Paragraph "86" of the Complaint.

87. The Defendants deny the allegations contained in Paragraph "87" of the Complaint.

88. Defendants deny all statements and allegations contained therein, including any claim for relief set forth in Plaintiff's "WHEREFORE" clause in the Complaint.

ADDITIONAL AVERMENTS

89. Defendants deny all claims and allegations in the Complaint not unequivocally admitted herein.

AFFIRMATIVE DEFENSES

90. Without assuming a burden as to any of the following Affirmative Defenses where the

law does not impose such a burden, Defendants assert the following Affirmative Defenses.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

91. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

92. Plaintiff has received payment of all sums which may have been due under the Fair Labor Standard Act ("FLSA") and the New York Labor Law ("NYLL") and their respective regulations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

93. Plaintiff is guilty of laches which bar certain of their claims.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

94. Plaintiff is guilty of unclean hands which bar certain of their claims.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

95. Without conceding the burden of proof on such issue, at all times, Defendants acted lawfully and in good faith and in a non-reckless manner and, although they deny the allegations of unlawful conduct as set forth in the Complaint, they had reasonable grounds for believing that the acts or omissions alleged in the Complaint were not violative of the FLSA and the NYLL and their respective regulations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

96. Defendants acted in good faith in conformity with and in reliance on written administrative regulations, orders, rulings, approvals and/or interpretations of the United States and New York State Department of Labor.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

97. Plaintiff's claims are barred, in whole or in part, by the *de minimis* doctrine.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

98. The Plaintiff's claims are barred to the extent that Plaintiff has failed to mitigate their damages or otherwise avoid harm.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

99. Plaintiff's claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupment or offsets permissible under the FLSA and NYLL.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

100. Assuming, *arguendo*, that Plaintiff is entitled to any compensation for overtime, any time spent in any preliminary or postliminary activities by Plaintiff must be excluded from compensable hours.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

101. The Complaint is barred, in whole or in part, pursuant, *inter alia*, to the Portal-to- Portal Act and the FLSA.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

102. Neither the Complaint nor any of its causes of action states a claim upon which an award of attorneys' fees may be assessed against Defendants.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

103. Defendants reserve the right to present evidence, if such evidence exists, demonstrating that Plaintiff engaged in misconduct of such severity that the Plaintiff would has been terminated if Defendants had known of the misconduct at the time it took place, thereby barring any claim for damages and/or other relief on behalf of the Plaintiff after that date.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

104. To the extent that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations, Defendants assert that defense.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

105. Defendants are not an Employer covered by the FLSA and/or the NYLL.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

106. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver and/or estoppel.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

107. Plaintiff cannot establish a willful violation under either the FLSA and/or NYLL.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

108. Plaintiff has named us as an improper Defendants as we are not an "Employer" under the FLSA and the NYLL.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

109. The Defendants are not a "covered enterprise" under the FLSA and as such the Plaintiff has no claims under the FLSA.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

110. In addition to the foregoing defenses, Defendants retain the right to amend his Answer to raise additional affirmative and other defenses as those defenses becomes known during this litigation.

JURY DEMAND

111. Defendants demand a trial by jury.

WHEREFORE, Defendants respectfully request a judgment,

1. Dismissing the Complaint in its entirety, with prejudice;

2. Denying each and every demand, claim and prayer for relief contained in Plaintiff's Complaint;
3. Awarding Defendants reasonable attorney fees and costs incurred in defending against this meritless action, and
4. For such other and further relief as to this Court deems just and proper.

Dated: Great Neck, New York
November 20, 2018

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